

Board of Trustees of County Library District authorized under Section 182.070 to purchase real property for use of the library with funds collected from the tax levied under Section 182.010.

COUNTY LIBRARY DISTRICT :
LIBRARY DISTRICT :

June 21, 1951.

Hon. Homer F. Williams,
Prosecuting Attorney
Bollinger County,
Marble Hill, Missouri.



Dear Sir:

This will acknowledge receipt of your letter requesting this office to furnish you an opinion on a question which you stated as follows:

"Has the Board of Trustees of a county library district under Section 182.070 the power to purchase a building for a library with funds derived from mill tax voted under Section 182.010, when county-wide library service is being provided?"

Authorization for the organization of County Library districts is found in Chapter 182, Sections 182.010 to 182.130, RSMo 1949. Section 182.010 provides in part that the voters within the proposed library district may vote for or against the levy of a tax for the establishment and maintenance of a county library. Said section reads as follows:

"Whenever one hundred taxpaying citizens of any county, outside of the territory of all cities and towns now or hereafter maintaining, at least in part by taxation, a public library, shall in writing petition the county court, asking that a county library district of the county, outside of the territory of all such aforesaid cities and towns, be established and be known as _____ county library district,' and asking that an annual tax be levied for the purpose herein specified, and shall specify in their petition a rate of taxation not to exceed two mills on the dollar; then the county court shall, if it finds said petition was signed by the requisite number of qualified petitioners, enter of record a brief recital of such petition, including a description of such proposed county library district, and of its finding aforesaid; and shall order that the propositions of such petition be submitted to the voters of such proposed district at the next annual election to be held the first Tuesday in April; and that the clerk of the county court shall cause to be published the proposition or propositions of such petition; and

said county clerk shall cause said proposition or propositions to be published in like manner, as near as may be, with the publication of 'the nominations to office,' as provided in section 120.580, RSMo 1949. Such order of court and such notice shall specify the name of the county and the rate of taxation mentioned in said petition, and such county clerk shall make and file in his office, return of service of such notice; and every voter within such proposed county library district may, in his proper district vote

'For establishing _____ county library district,'
or

'Against establishing _____ county library district,'
and may vote

'For _____ mills tax for a free county library,'
or

'Against _____ mills tax for a free county library;' provided, that in case the boundary limits of any city or town herein mentioned are not the same with the school district of such city or town, and such school district embraces territory outside the boundary limits of such city or town, then all voters, otherwise qualified and residing in such school district and outside the limits of such city or town, shall be eligible to vote on any proposition or matter of such library district, submitted to the voters at such election, and may cast a vote thereon, at the nearest and most convenient district schoolhouse within said county library district."

Section 182.020, RSMo 1949, provides in part for the establishment of a "county library fund" in the following terms.

"And if, from returns of such election, which shall be certified to the county court, the majority of all the votes cast on such propositions at such election shall be

'For establishing _____ county library district,'
and for the tax for a free county library, the county court shall enter of record a brief recital of such returns and that there has been established

' _____ county library district,'
and thereafter such

' _____ county library district'
shall be considered and held to be established, shall be a body corporate, and known as such; and the tax specified in such notice shall, subject to provisions herein below of this section, be levied and collected, from year to year, in like manner with other taxes in the rural school districts of said county. The proceeds of such levy, together with all interest accruing on same, with library fines, accruing on same, with library fines, collections, bequests and donations in money shall be deposited in the treasury of the county and be known as

the 'county library fund,' and be kept separate and apart from other moneys of such county, and disbursed by the county treasurer only upon the proper authenticated vouchers of the county library board herein mentioned; provided, that such taxes shall cease, in case the regular voters of any such district shall so determine by a majority vote at any annual election held therein, after petition, order of court, and notice of such election and of the purpose thereof, first having been made, filed and given, as in the case of establishing such county library district."

Section 182.070 delineates a part of the powers of the library district to be exercised through the board of trustees. Said section reads as follows:

"Said '_____ county library district' as such body corporate, by and through said county library board, shall have power to sue and be sued, to complain and defend, and to make and use a common seal, to purchase or lease grounds, to lease, occupy or to erect an appropriate building or buildings for the use of said county library and branches thereof, and to sell and convey real estate and personal property for and on behalf of the county library and branches thereof, to receive gifts of real and personal property for the use and benefit of such county library and branch libraries thereof, the same when accepted to be held and controlled by such board, according to the terms of the deed, gift, devise or bequest of such property." (Emphasis ours.)

It appears from this section that the legislature authorized the Board of Trustees of a county library district to purchase a building and grounds to be used for a library with the tax the voters may have voted to levy under section 182.010.

In addition to the levy voted upon under section 182.010, section 182.100 provides for an election to determine whether an additional tax should be levied in the library district for the erection of a library building. Said section reads as follows:

"Whenever, in any county library district, which has decided or shall hereafter decide to establish and maintain a free county library under the provisions of sections 182.010 to 182.130 the county library board shall by written resolution entered of record, deem it necessary that a free county library building should be erected in such county and one hundred taxpaying citizens of any such county library district, shall in writing petition the county court asking that an annual tax be levied at and as an increased rate of taxation for such library building and shall specify in their petition a rate of taxation not to exceed one and one-half mills on the dollar annually, and not

to be levied for more than five years on all taxable property in such county library district; then the county court shall, if it finds said petition was signed by the requisite number of qualified petitioners, enter of record a brief recital of such petition, and of its finding aforesaid, and shall order that the proposition of such petition be submitted to the voters of such county library district at the next annual election to be held on the first Tuesday in April; and that the clerk of the county court shall cause to be published the proposition of such petition and said county clerk shall cause said proposition to be published in like manner, as near as may be, with the publication of 'the nominations to office,' as provided in section 120.580, RSMo 1949. Such order of court and such notice shall specify the rate of taxation mentioned in said petition; and the county clerk shall make and file in his office return of service of such notice; and every voter within such county library district may, in his proper district, as in section 182.010 provided, vote

'For _____ mills tax for erection of free county library building,'

or

'Against _____ mills tax for erection of free county library building,'

and if the majority of the qualified voters of such county library district voting on said proposition at such election shall vote

'For _____ mills tax for erection of free county library building,'

the tax specified in such notice shall be levied and collected in like manner with other taxes of said county library district, and shall be known as 'The County Library Building Fund,' and shall be subject to the exclusive control of said county library board and be drawn upon by the proper officers in such county upon the properly authenticated vouchers of said board, and be used for the erection of the library building. The fund hereby provided for the erection of a free county library building in such county shall be in addition to the tax levied for the establishment and maintenance of such county library." (Emphasis ours.)

You will particularly note that this section provides that the "County Library Building Fund" shall be in addition to the tax levied for the establishment and maintenance of a county library. No attempt is made in the creation of this additional fund to limit the use of the fund created under the provisions of section 182.010.

Hon. Homer F. Williams.

The fund created by a tax voted under said section 182.010 may be used to purchase a building and grounds for the use of the county library whether or not any additional tax is levied under section 182.100 creating the "County Library Building Fund."

You express the idea in your letter that some type of county-wide library service is being provided in the county now, but you give no indication of the type service this is, i.e., whether it is a rental library operated by individuals, or whether the service is rendered through contract with the county and some established library such as is provided for under section 182.080, RSMo 1949. We presume, however, that the fact that some other type of library service is being rendered in the county would not remove from the County Library Board the discretion to use funds collected under section 182.010 for the purchase of grounds and buildings to be used in the operation of a County Library District.


CONCLUSION

The Board of Trustees of a County Library District is authorized under section 182.070 to purchase grounds and buildings for the use of the county library with funds derived from the tax levied under section 182.010, RSMo 1949.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney-General

JEM/ld